his vendor in trover. 1 HARV. L. REV. 4, note 2. If the courts will recognize this truth they will then be in a position to cast aside arbitrary fictions, and accept a rule working justice in all cases. A proper rule, it is suggested, is that impossibility should be recognized as a defense wherever it seems reasonable that, had the contingency which renders performance impossible been contemplated by the parties, they would have both agreed that its introduction into the contract, as a condition terminating the obligation, would be just.

STATUTORY JURISDICTION OVER CRIMES. — Whatever doubt there may be as to the early common law, it is now well settled that the crime of murder is committed at the place where the fatal blow is struck, irrespective of the place of death. *U. S.* v. *Guiteau*, 1 Mackey (D. of Col.) 498. Numerous statutes have been enacted that if a blow is inflicted without the state and death ensues therefrom within the state, the offence may be punished where such death occurs. Under these statutes, trials resulting in convictions have occurred at the place of death. *Tyler* v. *People*, 8 Mich. 320; *Comm.* v. *Macloon*, 101 Mass. 1. These statutes have recently been assailed as exercising extra-territorial jurisdiction over crimes — attempts in one jurisdiction to punish a crime committed in another. *Responsibility for Crime in Cases where the Criminal Act is Committed in one Jurisdiction and takes Effect in Another*, by Merle I. St. John. 3 Brief 422 (Oct., 1901). The difficulty seems to arise from a misapprehension of the crime that is being punished. It is true that a state cannot inflict punishment when the criminal act has been committed beyond its jurisdiction. Yet whoever causes a prohibited event to happen within a state has clearly made himself amenable to the law of that jurisdiction, regardless of whether he has been physically present or not. *U. S.* v. *Davis*, 2 Sumn. (U. S. Circ. Ct.) 482; *Lindsey* v. *State*, 38 Oh. St. 507. Homicide consists of a physical act and a chain of consequences which finally culminate in death. In the crime of murder the common law selects from this chain the application of the fatal force as the criminal act. But the state may if it wills select any other consequence and enact that whoever causes that consequence to occur within its borders shall be guilty of a crime, and whether it calls that crime murder or by some other name is quite immaterial. It is not the application of the fatal force that is here punished but a consequence thereof happening in a state whose people are injured by and whose laws prohibit such an occurrence. The statutes in question, therefore, create an offense not known perhaps to the common law — the offense of causing death — and this peculiar crime only occurs when the victim dies. Thus two distinct crimes are here committed; one, the common-law crime of murder, punishable only in the jurisdiction where the blow is struck, the other, the statutory offense of causing death, punishable in the state where death occurs.

STUDIES IN AUSTRALIAN CONSTITUTIONAL LAW. By A. Inglis Clark, Judge of the Supreme Court of Tasmania. Melbourne: Charles F. Maxwell. 1901. pp. xvi, 446. 8vo.

This is a book which should interest all students of our own system of constitutional law; and we heartily commend it to them. It gives the text of the Act of the Imperial Parliament which has united under a Federal Constitution those six states which now compose the Commonwealth of Australia, since the first day of the twentieth century; and this is accompanied by an instructive treatise and commentary on its leading provisions. What the author has undertaken is more exactly indicated in the title of his work and in his own words when he says: "The time has not yet arrived for a compre-

hensive and elaborate commentary upon it; and all that will be attempted in this volume will be a consideration of some of its fundamental and more prominent features."

The Australian constitution enacted by the Imperial Parliament in July, 1900, was largely modelled on our Federal instrument. Some of the points of difference are full of instruction: the fact for instance that in Australia free trade among the States is expressly secured; that the Federal government is allowed, in terms, to provide for bounties on the production or export of goods, for bills of exchange and promissory notes, insurance and banking, other than State insurance and banking, trade-marks, trading and financial corporations, marriage and divorce, invalid and old-age pensions; and that the Supreme Federal Court has final appellate jurisdiction on questions of local as well as Federal law.

The author, formerly attorney-general of Tasmania, is a careful and learned writer, who cites freely the apposite decisions of our own Supreme Court with a remarkable general accuracy. Now and then there is a slight error or inadvertence, as when some of the earlier decisions in the second volume of Dallas are attributed to the Supreme Court. The decisions of that tribunal do not begin till page 399.

In discussing the clause which gives jurisdiction in Australia to the Federal Supreme Court in all cases "between a State and a resident of another State," (the instrument does not speak of "citizens"; that word occurs but once, and then only in reference to foreign powers), the effect of our eleventh amendment upon the like clause in our constitution seems not to be quite accurately conceived. That amendment did not purport to change our constitution. It merely construed it and overruled the decision of the Supreme Court in *Chisholm* v. *Georgia*. Therein it furnished an extremely interesting instance of the people acting in their ultimate *judicial* capacity. This matter is well expounded in *Hans* v. *Louisiana*, 134 U. S. 1. What, then, under these circumstances, it may well be asked, is the true meaning in Australia of the clause above quoted? Is it, as our author seems inclined to think, that which our Supreme Court put upon the like clause in our own constitution, in *Chisholm* v. *Georgia*? Or that which our *supremest* tribunal, the people of the United States, put upon the same clause in the eleventh amendment, acted upon as it was by the Supreme Court, in dismissing all other cases then on the docket, and approved (as an original question), as it has been by the Supreme Court in 1889, in *Hans* v. *Louisiana*, 134 U. S. 1? That is, indeed, a pretty question. There is another clause of the Australian constitution (s. 78) that seems to enable the Federal parliament to confer this jurisdiction on the courts. The excellent "Annotated Constitution of Australia," by Quick and Garrand, denies the doctrine of *Chisholm* v. *Georgia* in its application to the Australian document.

In saying that "President Jefferson on one occasion refused to obey a *mandamus* granted by the court to compel the admission of an applicant for a judicial office to which he had been appointed by the President's predecessor," the author misremembers *Marbury* v. *Madison*. No *mandamus* to a President has ever been issued, and no President has ever yet had occasion to discharge his undoubted duty of disregarding such a precept.

These things, however, are but trifling qualifications of an accuracy that is remarkable in the task of dealing with a branch of law and a set of cases so foreign to the ordinary studies of an English lawyer.

In considering the regulation of "trade and commerce with other countries and among the States," the writer takes the view that the power is exclusive. It is true, as we have said, that section 92 of the Australian instrument expressly provides for free trade among the States; and thus one point is settled there, which may still be debated among us; but that obscure bugaboo, the "Police Power," remains; and in view of that fact it is pathetic to see the confidence which the writer expresses that the judges in Australia are to be saved the distressing difficulties that have embarrassed our tribunals in coördinating State and Federal power in dealing with this subject.

The author is too respectful to some of our decisions, or rather to the exposition and reasoning of them; especially to that poor conceit, *when put as a*

general proposition, about the silence of Congress being equivalent to an Act of Congress. It is to be hoped that the Australian Court will consult the things that make for its peace in not trying to follow our court too closely into the hopeless mazes on this subject in which it is still struggling. Let the new tribunal, rather, at once recognize that it is mainly for the Federal legislature and not the courts to draw the line between what the States may and may not do in the dim region that connects the local power of legislation with the Federal power of regulating interstate and foreign commerce; and that in the main, so far as the Federal Courts are concerned, the States must be allowed to go on as before in regulating their own internal affairs. The true line there has been suggested in some opinions of Kent, and of Taney, Curtis, and Gray, — rather than in many of the best known and oftenest quoted decisions of the Supreme Court, which on some fundamental matters has still to find sure footing.

There are many interesting points about this great new instrument in Australia which one would like to touch on, but space and time fail. Let us refer only to a radical difference between the Australian constitution and ours, not overlooked by Judge Clark, namely, that we ground ours on the authority of our own people, while theirs, in a legal sense, rests ultimately on an Act of the Imperial Parliament. In both cases the power that made can unmake. In the case of Australia an Act of the Imperial Parliament which repealed this "Constitutional Act," would be in the strictest sense a legal proceeding; "unconstitutional but legal," as they say in England. J. B. T.

SELECT PLEAS OF THE FOREST. Edited by G. J. Turner. Publications of the Selden Society, vol. 13. London: Bernard Quaritch. 1901. pp. cxxxix, 192. 4to.

One cannot examine this book without perceiving clearly why the extension of the royal forests contributed to the downfall of John, and why the revival of ancient forest rights contributed to the downfall of Charles the First. The book is indeed of vast interest both to students of English constitutional history and to persons in search of vivid presentations of mediæval society.

Heretofore Manwood's Laws of the Forest and Coke's Fourth Institute, chapter 73, have been the chief authorities upon the subject; but those old volumes cannot compete with this new one for the esteem of the reader who wishes to gain a lively conception of what the forest law actually was and what the forest courts actually did and what a man's life in the forest actually involved. It is one thing to be told by a treatise that the king had in ancient times the prerogative of declaring any part of the realm a forest, that in this forest game could not be disturbed by any one without the king's license, that in this forest the trees and the undergrowth had to be left undisturbed as homes for the game, that in this forest houses could not be built, that these regulations limited the rights of the persons nominally owning the land, and that all these regulations, and many more, were administered by courts composed of appointees of the crown, acting with severity in accordance with the interest of the appointing power; and it is quite another thing to read the memorials of the actual transactions of the forest authorities, containing small but dramatic pictures of the excitements of life in the precincts where every man was a poacher either *in esse* or *in posse* and was treated accordingly, where no man had the normal rights to use his own land as he wished, and where the possession of a bow or of fresh meat or of a stick of wood was an embarrassing piece of circumstantial evidence.

The extracts in this volume extend from 1209 to 1334, thus embracing the time of the Great Charter of 1215 and the Charter of the Forest of 1217. Upon almost every page may be found matter of lively interest; but the reader who is in too great haste to read the whole may be grateful for references to pages 2, 3, 9, 10, 14, 15, 18, 19, 21, 28, 84, 92, 94, 99–102, 110 and 119–121.

The Introduction, entitled The Forests in the Thirteenth Century, treats of: I. The Forest and the Beasts of the Forest; II. The Forest Officers;